**Remarks**

Reconsideration of the application is respectfully requested.

These remarks are directed in response to the Office Action mailed August 1, 2008 in the subject Application. Claims 70-84 and 86-115 are pending in the subject Application.

Applicant gratefully acknowledges the assistance of Examiner Vivek Koppikar and Supervising Examiner Luke Gilligan for suggested claim language kindly provided.

Applicant has incorporated the suggested claim language into this amendment. Applicant has amended claims 70, 84, 100, and 101 of the instant application and the presented claims are believed to be patentable over the cited references. Claims 86 - 89, 91-99, and 102-115 have been cancelled by this amendment.

**I. Rejection of Claims 70-77, 81-82, 84-86, 91-100, 102-107, 111-113 and 115 under 35 U.S.C. § 103(a).**

More particularly, claims 70-77, 81-82, 84-86, 91-100, 102-107, 111-113 and 115 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,390,238 to KIRK (hereinafter "KIRK"), in view of the ABSTRACT of Lunar Radiation Corp. (hereinafter "LUNAR ABSTRACT"), and further in view of U.S. Patent No. 5,301,105 to CUMMINGS (hereinafter "CUMMINGS

Applicant respectfully traverses the above rejections of the claims.

**A. The cited prior art references fail to teach or suggest, among other limitations of Applicant's claims, information derived from at least two of a plurality of patient records and the sorting of information as required by Applicant's claims 70 and 84.**

Applicant's claim 70 recites, among other limitations:

> (2) information about prescribed pharmaceuticals from said separate patient records correlated with medical conditions for which the pharmaceuticals are suitable for treating, said information derived from at least two of said plurality of separate patient records; in which information about prescribed pharmaceuticals is selectively arranged by:
> a) the order of frequency with which said prescribed pharmaceuticals are prescribed by a user;

b) in alphabetical order;
c) in order of condition treated; and
d) in order of pharmaceuticals prescribed for particular patients (claim 70 as currently presented).

Applicant's claim 84 requires similar limitations, among others. As such, each of the independent claims 70 and 84, require, among other limitations, a plurality of patient records for separate patients and information about pharmaceuticals correlated with medical conditions derived from at least two of the plurality of patient records and the sorting of the information.

The Office Action acknowledges the failure of KIRK and LUNAR ABSTRACT to teach or suggest the above limitations of applicant's claims. Applicant respectfully directs attention to page 2, item 4 of the Office Action, stating that KIRK does not teach information about pharmaceuticals correlated ("regarding" as stated in the Office Action on page 2) with medical conditions for which the pharmaceuticals are suitable for treating.

Additionally the second sentence of the LUNAR ABSTRACT cited in the Office Action states, in its entirety:

> Scan results can be recalled chronologically to aid monitoring of therapy and display disease process and patient progress.

As can be seen from the above quoted portion of the LUNAR ABSTRACT, cited in the Office Action, among other limitations of Applicant's claims, the LUNAR ABSTRACT does not teach or suggest information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, nor does it teach the sorting limitations as required by Applicant's independent claims 70 and 84.

The Office Action, on page 3, cites the detailed description in of CUMMINGS that teaches information derived from at least two of a plurality of patient records.

Col. 9, line 66 through Col. 10, line 8 of Cummings states:

> Further reference to the drawings reveals that FIG. 6 is a continuation of FIG. 5. Accordingly, referenced to the upper portion of FIG. 6 reveals that, next the system addresses the question as whether a proposed pattern of treatment is appropriate. This is indicated by rectangle 120. The physician or staff member enters into the system data identifying the purposed pattern of treatment, whereupon, the system compares the proposed pattern of treatment with the

> aforementioned recommended treatment protocols and provides an indication of any problem differences.

However, nothing in this cited portion of CUMMINGS teaches or suggests information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, said information derived from at least two of a plurality separate patient records, as required by currently pending claims 70 and 84. CUMMINGS only discloses a compilation of possible treatment plans, which possible treatment plans are not patient records. As such, CUMMINGS fails to teach or suggest, among other limitations of Applicant's claims, a plurality of patient records. Thus, CUMMINGS cannot possibly be said to teach, suggest or motivate, among other limitations of Applicant's claims, information derived from at least two of a plurality of separate patient records, and the sorting as required by Applicant's claims 70 and 84. As such, Applicant's independent claims 70 and 84, as amended herein, are believed to be patentable over KIRK, LUNAR ABSTRACT and CUMMINGS, taken alone or in combination.

Because the combined references of KIRK, LUNAR ABSTRACT, and CUMMINGS fail to teach or suggest all of the limitations in

Claims 70 and 84, Applicant asserts Claims 70 and 84 are patentable over the cited references taken alone or in combination. Applicant respectfully requests reconsideration of these claims and withdrawal of this rejection.

B. The cited prior art references fail to show, among other limitations of Applicant's claims, drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences; verifying, prior to fulfillment, that said prescribed drug is included on said drug formulary to ensure that the electronic prescription is filled with a benefit plan recommended drug, as required by Applicant's claims 100 and 101.

The current Office Action, on page 17, item (5), rejects Claim 100 and item (6) rejects claim 101 under 35 U.S.C. 103(a). Applicant will address each of these rejections with a single response.

Each of amended claims 100 and 101 require verifying, prior to fulfillment, that said prescribed drug is included on said drug formulary.

There is no teaching or suggestion for the formulary limitations or the limitation requiring verification of a drug on a formulary.

The Office Action cites CUMMINGS detailed paragraph 33, which states:

> Further reference to the drawings reveals that FIG. 6 is a continuation of FIG. 5. Accordingly, referenced to the upper portion of FIG. 6 reveals that, next the system addresses the question as whether a proposed pattern of treatment is appropriate. This is indicated by rectangle 120. The physician or staff member enters into the system data identifying the purposed pattern of treatment, whereupon, the system compares the proposed pattern of treatment with the aforementioned recommended treatment protocols and provides an indication of any problem differences.

Applicant respectfully traverses this rejection. Nothing in this cited portion of CUMMINGS teaches or suggests anything relating to a patient's drug benefit provider drug formulary preferences or verification of a drug on a formulary to ensure that electronic prescriptions are filled with a benefit plan recommended drug as required in Applicant's claim. The proposed pattern of treatment with aforementioned recommended treatment protocols cannot be analogized to drug formulary information.

Treatment protocols may or may not including formulary preferred drugs.

The currently pending claim provides for a prescription fulfillment system that provides; "verifying, prior to fulfillment, that said prescribed drug is included on said drug formulary".

The specification of the subject application, in paragraph [0039] describes the selection based on formulary requirements as follows:

> System suggestions for condition-related drug selection may be further refined into categories such as relative cost, generic or brand name and so on. Where many drugs are available for treating a patient's active condition, one particularly useful presentation is by multiple lines of therapeutic preference according to drug formulary guidelines. Thus, within the patient's particular formulary there may be suggested first, second and third lines of therapy. Different suggestions may be made for different patients according to the preferences of the patient's particular drugs benefit management company.

For example, a specific treatment protocol may instruct a doctor to treat a patient with an oral diabetic medication. However, there are numerous oral diabetic medications available

to prescribers and there would not be any indication as to which one to give this particular patient when using the system of CUMMINGS.

The teaching of any type of treatment protocol does not teach formulary preferences. Treatment protocols may teach things that by chance would fall within a formulary preference but do not necessarily instruct a prescriber as to a patients individual formulary preferred drug as claimed in subject Application.

Combination with Muirhead reference does not cure the deficiency. Claims 100 and 101 require, inter alia, verifying, prior to fulfillment, that said prescribed drug is included on said drug formulary. Muirhead discusses the very problem that the present invention corrects, that a patient arrives to fulfill a prescription that is not on their specific formulary. There is no teaching or suggestion in Muirhead for verifying, prior to fulfillment, that said prescribed drug is included on said drug formulary, as required in claims 100 and 101.

This failure to teach the drug formulary information element of Claims 100 and 101 prevents a rejection under 35 U.S.C. 103(a). Without a teaching or suggestion to arrive at the claimed invention this rejection cannot be properly be applied. Applicant respectfully requests consideration and withdrawal of this rejection.

Because none of the cited reference provide any teaching or suggestion for verifying, prior to fulfillment, that said prescribed drug is included on said drug formulary, as required in currently amended claims 100 and 101, Applicant asserts the rejection under 305 USC 103(a) is improper.

Applicant respectfully requests reconsideration and withdrawal of all current rejections.

Based on the Amendments presented herein, Applicant respectfully asserts the application is now in condition for allowance. If the Examiner believes there are any additional issues that have not been resolved, the Examiner is invited to call the undersigned representative who is attorney of record in this case.

No new matter has been added by way of these amendments.

The Commissioner is hereby authorized to charge our Deposit Account No. 19-0734, should additional fee(s) be required, or credit any overpayment, in the filing of this document to expedite the prosecution of this application.

Respectfully submitted,

Date: 12/17/2008

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